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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,906	12/12/2001	Louis-Marie Dussere	213716	5515

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EXAMINER

PANTUCK, BRADFORD C

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 11/14/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/937,906

Applicant(s)

DUSSERE, LOUIS-MARIE

Examiner

Bradford C Pantuck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see Amendments pages B6 and B7, filed September 4<sup>th</sup>, 2003, with respect to the rejection(s) of claim(s) 1-20 under Branam (U.S. Patent No. 5,814,074) in view of Orpaz (EP 0 383 315) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made by U.S. Patent No. 1,207,120 to Younker in view of EP 0 400 217 to Bergersen.
2. Applicant's arguments filed September 4<sup>th</sup>, 2003 with regards to the rejection of claims 1 and 10 under U.S. Patent No. 1,207,120 have been fully considered but they are not persuasive. Although Younker "is not [explicitly] concerned with stimulation of the child's stomatognathic system," Younker discloses all of the structure claimed by the applicant. Arguing that his nipple does not extend to the back of the baby's tongue is not persuasive, for a couple of different reasons. The tongue is not a fixed piece of tissue: the tongue can be moved so that the back of the tongue can touch any part of the teeth or any reasonably sized nipple. Also, the back of a child's tongue is a fairly broad place—and is contingent upon the size of the child relative to the size of the pacifier.

Adding the limitation of "providing proper relative positioning of the dental arches" does not supersede Younker. "Proper relative positioning of the teeth" seems to be a fairly subjective limitation, particularly when the applicant does not claim the structure in his invention that accomplishes this limitation (vestibular screen 40/45

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with difference of delta). Younker's invention appears to be capable of holding the baby's gums in *a* proper position.

### ***Specification***

3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
4. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

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- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A “Sequence Listing” is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required “Sequence Listing” is not submitted as an electronic document on compact disc).

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 2, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 1,207,120 to Younker. Regarding Claims 1 and 10, Younker discloses a teat that includes a plate with a bite plane (21,22), a vestibular screen (on the top, between 16 and 21—and on the bottom between 22 and 20), a means projecting forwards from the mouth, and a nipple (10) that contacts the back of the tongue. The teat includes an element (11) that closes a bottle (12), as shown in Figure 1. The teat further includes a channel (13) passing through the nipple so that liquid from the bottle can be delivered to an infant (column 2, lines 73-79). Younker’s device is capable of performing the intended use claimed by the Applicant.
6. Regarding Claim 2, Younker discloses a *resilient mouth piece* [Column 1, lines 23-24], i.e. the nipple and the point the nipple is attached to the vestibular screen are both resilient (elastic).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 3-7, 9, 11-17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,207,120 to Younker in view of EP 0 400 217 A1 to Bergersen. Regarding Claims 3 and 11, Younker discloses a vestibular screen (on the top, between 16 and 21—and on the bottom between 22 and 20), but fails to disclose that they are offset from each other. However, Bergersen teaches that the bottom portion of a vestibular screen should be offset from the top portion so as to correctly position the patient's jaw, as shown in Figure 5 [Column 3, lines 38-43; Column 1, lines 45]. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to form the plate of Younker like the plate of Bergersen, offsetting the top vestibular screen from the bottom vestibular screen in order to help an infant's jaw to form properly as he or she grows.
8. Regarding Claim 4, the modified Younker device has an offset of about 1-3 mm. As shown in Fig. 5, the offset is very small, and the vestibular screen is curved so that the offset varies from zero millimeters to several millimeters.
9. Regarding Claim 5, the modified Younker device the vestibular wall forms a substantially vertical wall with the rear edge of the plate (48) and forms an aligner for accepting the dental arches [Bergersen: Column 3, lines 27-32].
10. Regarding Claim 6, the modified Younker device has a U-shaped plate [Bergersen: Fig. 4].
11. Regarding Claim 7, Younker discloses an integrally molded plate, vestibular screen, and nipple. Figure 3 shows the cross section of all of these components, and

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from the shading, one can tell that all are made out of one integral piece of resilient material.

12. Regarding Claim 9, the modified Younker device has a means (15) projecting forwards out of the mouth with a shield (14) [Younker: Fig. 4].
13. Regarding Claims 12-17, 19, and 20, the modified Younker device has the claimed feature, as explained with reference to Claim 1, above.
14. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,207,120 to Younker in view of EP 0 400 217 A1 to Bergersen in further view of EP 0 383 315 A1 to Orpaz. Regarding claim 8, the modified Younker device fails to include an abrasive surface on the plate. However, Orpaz includes an abrasive surface on the plate (1), and teaches that small protrusions on the plate assist in massaging the gums (column 1, line 39). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an abrasive surface on the plate of Branam, as taught by Orpaz, as this helps to massage the gums.
15. Regarding Claim 18, the modified Younker device has the claimed feature, as explained with reference to Claim 1, above.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone number is (703) 305-8621. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

BCP  
BCP

  
MICHAEL J. MILANO  
SUPERVISORY PATENT EXAMINER  
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